FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958.

No. 577

93.970 ACRES OF LAND, MORE OR LESS, SITUATE IN COOK COUNTY, ILLINOIS, AND ILLINOIS AIRCRAFT SERVICES AND SALES COMPANY, INCORPORATED,

Cross-Petitioner,

v.

UNITED STATES OF AMERICA,

Cross-Respondent.

PETITION FOR A CROSS-WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

J. HERZL SEGAL,
1 North LaSalle Street,
Chicago 2, Illinois,
Counsel for cross-petitioner.

LEONARD R. HARTENFELD,
33 S. Clark Street
Chicago, Illinois
Of Counsel.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of The United States:

Illinois Aircraft Services and Sales Company, Incorporated prays that a cross-writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above entitled case on July 15, 1958.

Cross-petitioner desires a cross-writ of certiorari only if the Court grants a writ of certiorari upon the petition of the Government. The Court of Appeals reversed the judgment of the trial court and remanded the cause with directions that judgment be entered on the jury verdict of $25,000 in favor of defendant-condemnee, the remand-

ment being, however, without prejudice to the right of the trial court to allow the defendant's alternative motion for a new trial. This petitioner believes that in all probability the trial court, upon the remandment, will allow the alternative motion for a new trial because by granting an additur the trial court obviously considered the jury verdict inadequate by $50,000. A new trial should result in a judgment which will obviate any error which condemnee complained of on its cross-appeal to the Court of Appeals wherein it urged that even with the additur the judgment did not constitute just compensation.

However, if this Court should decide to review the decision of the Court of Appeals upon the petition of the Government, then the petitioner respectfully requests that the entire case be reviewed including the issues discussed in this petition for cross-writ of certiorari.

CITATIONS TO OPINION BELOW.

The opinion of the Court of Appeals is printed in Appendix A hereto. It had not yet been officially reported at the time of the preparation of this petition.

JURISDICTION.

The judgment of the Court of Appeals was entered on July 15, 1958. No petition for rehearing was filed. This petitioner made due application for an extension of time within which to file its petition for cross-writ of certiorari and on October 6, 1958, the Honorable Tom C. Clark entered an order that the time for filing petition for writ of certiorari in the above entitled cause be extended to and including December 12, 1958.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

QUESTIONS PRESENTED.

(1) Whether in a condemnation case instituted by the United States of America and tried before a jury, where the condemnor introduced no evidence upon condemnee's theory of the case, which theory was upheld by the trial court and Court of Appeals, the Court of Appeals has the power to increase the judgment to the minimum amount in the range of values of the condemned property testified to by condemnee's witnesses, without conflicting evidence.

(2) Whether in a condemnation case instituted by the United States of America and tried before a jury, the trial court has the power, without the consent of the condemnor, to award an additur, which increased the jury verdict because the trial court considered the jury verdict inadequate as just compensation.

(3) In a condemnation case, where a judgment for just compensation is entered upon the verdict of the jury, and no notice of appeal was ever filed designating such judgment, and subsequently a second judgment, entitled "Amended Judgment" is entered increasing the amount of just compensation and condemnor files a notice of appeal designating only the second judgment, is the condemnor precluded from arguing any issue of fact or law adjudicated by the first judgment, leaving as the only arguable issue on appeal the power of the trial court to increase the verdict of the jury?

STATUTES AND RULE OF COURT INVOLVED.

The statutory provisions involved are 40 U.S.C. 257 and 50 U.S.C. 171, authorizing the condemnation. Also involved is Rule 71A (h) of the Federal Rules of Civil Procedure which covers the trial procedure in condemnation cases. (See Appendix B).

STATEMENT.

This is a condemnation suit instituted by the United States to acquire all outstanding rights, if any, which the condemnee had under a lease from the Government to condemnee covering premises in Cook County, Illinois, on which was located an airport. (Jt. App. 9-25). The case was tried before a jury which returned a verdict of $25,000 as just compensation for the taking (Jt. App. 442). The court entered judgment on the verdict of this amount (Jt. App. 442). Condemnee filed a motion for an additur on the ground that the jury verdict was inadequate as just compensation and an alternative motion for new trial (Jt. App. 444-5). The motion was based on the ground that the evidence of values testified to by condemnee's witnesses ranged from $143,000 to $200,000, and that no evidence to the contrary was introduced by condemnor (Jt. App. 444). The trial court allowed the motion for an additur and entered a second judgment which the court designated an "Amended Judgment" for $75,000 together with interest (Jt. App. 446-7).

The Government appealed from the second judgment only and in the Court of Appeals urged that condemnee was entitled to no compensation. Condemnee cross-appealed from the second judgment only on the sole ground that the additur was insufficient and that the judgment should have been for not less than $142,000 (Jt. App. 451).

The Court of Appeals reversed the judgment on the ground that the trial court had no power to award an additur without the consent of the Government, and remanded the cause with directions that judgment for $25,000 together with interest be entered upon the jury verdict, the remandment being, however, without prejudice to the right of the trial court to allow condemnee's

alternative motion for a new trial. (See opinion, Appendix B).

At the trial, the Government proceeded on the theory that the lease had actually been revoked prior to the condemnation proceedings and also, if it had not been revoked, it was revocable upon sixty days notice for any reason whatsoever desired by the Government. All of the Government's valuation witnesses testified on the basis of such theory. It was their opinion that such a lease had no value. The trial court and the Court of Appeals held that the lease had not been properly revoked and could be revoked only if the premises were needed for aviation purposes, as distinguished from the Government's position that the lease could be revoked for any reason whatsoever. The only valuation witnesses who testified on the theory upheld by the trial court and Court of Appeals were on behalf of the condemnee. The range of values was from a low of $142,000 to a high in excess of $200,000.

REASONS FOR GRANTING THE WRIT.

1. The decision of the Court of Appeals below is in conflict with the decision of the Court of Appeals for the Fourth Circuit in *United States* v. *Grannis*, 172 F. 2d 507 (C.A. 4, 1949), cert. den. 337 U.S. 918). In that case it was held that where the evidence on damages was uncontradicted, a pure question of law was presented, so that the Court of Appeals could override a jury verdict of "not guilty" and order the entry of a judgment for $84,710.06 which was warranted by the evidence. In the case at bar the evidence with respect to just compensation was not in conflict. This unusual situation developed because during the course of the trial each party stood firm on its own theory of the case. The Government took